DOCUMENT RESUME

ED 229 194 RC 014 004

TITLE	Implementing the Indian Child Welfare Act of 1978.
INSTITUTION	National Indian Child Abuse and Neglect Resource Center, Tulsa, OK.
SPONS AGENCY	National Center on Child Abuse and Neglect (DHEW/OHD), Washington, D.C.
PUB DATE	80
GRANT	90-C-1744(02)
NOTE	5p.; For related documents, see RC 014 000-005.
PUB TYPE	Viewpoints (120)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Agency Role; *American Indians; *Child Abuse; *Child Advocacy; *Child Neglect; Child Welfare; Court Litigation; Court Role; Prevention; *State Courts; *Welfare Agencies
IDENTIFIERS	*Indian Child Welfare Act 1978; State Tribal Relationship

ABSTRACT

The information sheet, consisting of four pages, looks at the implementation of the Indian Child Welfare Act of 1978 by presenting goals of welfare agencies working with Indian families, provisions of the Act, reasons for reluctancy of states to accept tribal jurisdiction of child welfare cases, and criteria for evaluating petitions for reassumptions of jurisdiction. Four major policy goals that federal, tribal, state, and private welfare agencies should consider are: increased involvement by tribal governments and other Indian organizations; recognition of inconsistencies between Indian tribal cultures and current child welfare services techniques, standards, and goals; placement of Indian children in Indian adoptive and foster homes; and unmet needs of Indian families and children. Provisions of the Indian Child Welfare Act of 1978 include: placement of an Indian child residing on an Indian reservation shall be valid only by appropriate tribal court; Indian families will be accorded a full and fair hearing; due process rights of Indian families shall be respected; foster care placement may not be ordered unless evidence demonstrates it is for the child's benefit; priorities in placement of Indian children will be established; and the Secretary of Interior shall assist Indian tribes in the establishment and operation of Indian family development programs. (ERB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Pamela K. Chibitty
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

ED229194
RC 014004

IMPLEMENTING THE INDIAN CHILD WELFARE ACT OF 1978

Spring 1980

This paper was made possible by Grant No. 90-C-1744(02) from the National Center on Child Abuse and Neglect, Children's Bureau, Administration for Children, Youth and Families, Office of Human Development Services, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE. Its contents should not be construed as official policy of the National Center on Child Abuse and Neglect or any agency of the Federal Government. It was developed and is distributed by the National Indian Child Abuse and Neglect Resource Center, 6539 E. 31st St., Tulsa, OK 74110, and can be reproduced freely by xerox.

The separation of Indian children from their parents by social service agencies has long been a cause of resentment and frustration for Native Americans. Recent surveys (AAIA 1977, Federal Register, Monday, April 23, 1979) indicate that between one-fourth and one-third of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. Indian children are placed in foster homes at per capita rates up to 25 times greater than non-Indian children (AAIA, 1977). A majority of these placements are with non-Indian households.

The reasons for these differential placement rates are complex and span a broad range of motivations. However, one disquieting aspect of removing Indian children from their parents is the failure of Anglo child and youth service agencies to understand the dynamics of American Indian family organization. Many social workers evaluate parental behavior based on values drawn from their culture and consequently may misunderstand the motivation behind the acts of Indian parents.

In 1975, the Children's Bureau of HEW and the Office of Native American Programs sponsored a "State-of-the-Field Study of Child Welfare Services for Indian Children and Their Families On and Off the Reservation" (henceforth ICW). This study concluded that Federal, tribal, state and private welfare agencies should aim at the achievement of four major policy goals:

1) Increased involvement by tribal governments and other Indian organizations in the planning and delivery of child welfare-related social services.

2) More study and recognition of inconsistencies between Indian tribal cultures and current child welfare services techniques, standards, and goals.

3) Placement of Indian children in Indian adoptive and foster homes.

4) The commitment of resources to meet the unmet needs of Indian families and children.

Since the State-of-the-Field Study was published, several major problem areas have undergone further development, and need further investigation:

The Indian Child Welfare Act of 1978 was signed and provides that:

--No placement of an Indian child who is residing or domiciled on an Indian reservation shall be valid unless made pursuant to an order of the appropriate tribal court. In the case of Indian children not residing or domiciled on the reservation, the Act directs state courts having jurisdiction over an Indian child custody proceedings to transfer the proceeding, absent good cause to the contrary, to the appropriate tribal court upon the petition of the parents of the Indian child.

--Indian families will be accorded a full and fair hearing when child placement is at issue.

--The due process rights of Indian families are respected. The Act provides that an indigent Indian parent or custodian will have a right to court-appointed counsel in any involuntary state proceeding for foster care placement or termination of parental rights. Where state law makes no provision for such appointment, the Secretary of the Interior is authorized to pay the reasonable expenses and fees of counsel.

--No foster care placements may be ordered unless "clear and convincing" evidence demonstrates the continued custody of the child is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered in the absence of a determination supported by evidence "beyond a reasonable doubt" that the continued custody of the child by its parents would result in serious emotional or physical damage.

--Priorities in the placement of Indian children be established. First preference will be given to members of the child's extended family and other preferences to homes licensed by Indian tribes or maintained by Indian people and institutions operated by Indian tribes and organizations.

--The Secretary of the Interior assists Indian tribes in the establishment and operation of Indian family development programs, the objective of which will be to prevent the breakup of Indian families and to ensure that Indian children are removed from their families only as a last resort, if remedial services to help the family stay together have failed. The Act also protects an adoptive child's right to tribal membership and to benefits associated with that membership.

In 1953, Public Law 280 brought Indian lands (with some exceptions) in California, Minnesota, Nebraska, Oregon, Wisconsin, and later Washington under the criminal and civil jurisdiction of the states in which they were located. The jurisdiction given to the states was subject to a

number of important limitations designed to preserve the trust protections surrounding Indian property.

The transfer of jurisdiction to PL 280 states created serious financial problems for the states and/or counties involved. Property taxes, usually the main source of taxes at the county level, are prohibited on Indian trust lands. Many states felt that Federal funds should be allocated to support state-provided services to Indians, but such funds were not forthcoming. In the majority of cases the Federal Government did not cede jurisdiction to the states. The many tribes in these non-PL 280 states had theoretical jurisdiction over such child welfare matters as foster care placement, adoptions and child abuse and neglect.

States are reluctant to accept tribal jurisdiction because:

--In order to be eligible for Federal reimbursements, aid to families with dependent children, foster care (AFDC-FC) homes and day-care facilities must be licensed or approved.

--State governments have been reluctant to contract with tribal governments for the provision of services because they lack the power to take tribal governments to court to recover funds which might be spent outside the terms of a contract or without proper documentation (ICW:5).

--Where Title II is involved, states are reluctant to pay the 25% local share necessary to earn the 75% Federal share

--State governments do not have the power to tax Indians' real or personal property on reservations, nor can states tax Indians' income earned on reservations. Accordingly, states have often argued that they cannot afford to pay the local share for services to reservation Indians (ICW:5).

This attitude should be contrasted with the stated legal responsibility to tribes (or segments thereof) within their borders. Indians are citizens of the state in which they reside, and are entitled to share in its benefits.

--In PL 280 states, reservations reassuming jurisdiction of Indian child custody proceedings must petition the Bureau of Indian Affairs.

The Secretary of the Interior will use a number of criteria for evaluating the petitions for reassumption of jurisdiction; among them are:

--A tribal judicial system has been established that is capable of adjudicating child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. El SEQ;

--Child care services sufficient to meet the needs of any child that the tribal system finds must be removed from parental custody are available; and

--The tribe or tribes have established a procedure for clearly identifying who is a member of the tribe or is eligible for membership.

The petition procedures make a number of assumptions about tribal and Indian organizations' capacities to assemble and provide information and child welfare services, including a prior capacity to provide census data about the tribe. an existing judicial system with a juvenile code formulated to meet the needs of American Indians is in place, and that a coordinated child welfare delivery system exists prior to resumption of jurisdiction.

Many tribes and Indian organizations lack the resources to meet the petitioning criteria. Therefore, technical assistance prior to the petition procedure is necessary.

Licensing of child placement agency services and child care have been a major goal of Indian tribes and Indian child welfare agencies. Yet states have been reluctant to provide this recognition, citing several reasons for their reluctance to license tribal services on reservations which include that states do not have the power to enforce licensing procedures on non-PL 280 reservations and licensing and recruiting standards for foster homes generally have not been spelled out and are still a problem because of differing cultural standards.

The Indian Child Welfare Act has somewhat changed these circumstances with respect to Federal funding. Section 201(B) provides that "licensing or approval of foster or adoptive homes or institutions by an Indian tribe is deemed equivalent to state licensing or approval for purposes of qualifying for assistance under a Federally assisted program."

The major drawback of the Indian Child Welfare Act was the lack of funding to implement it. Only in early 1980 were the first funds made available (through the Bureau of Indian Affairs) for small mini-grants to develop pilot projects addressing the issues raised in the Indian Child Welfare Act.

The National Indian Child Abuse and Neglect Resource Center has been functioning since early 1979, and has seen as one of its major responsibilities the assistance of Indian tribes and agencies in developing the professional skills and procedures and capabilities to address the many related problems--developing children's and juvenile codes, establishing tribal court procedures for handling child custody cases, recruiting and training and evaluating of Indian foster and adoptive families, monitoring state agencies, acting as advocates for Indian children and families, and providing technical assistance for development of social service programs that will assist Indian families in staying together happily and healthily.

1980 and 1981 will be pivotal years. The reclaiming of our children, the undergirding of our families, has to be our highest priority. Any assistance we can provide in that direction will be heartily undertaken.